

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:00 CR 201

UNITED STATES OF AMERICA,

v.

KEITH HOWARD AKERS,

Defendant.

ORDER

THIS MATTER IS BEFORE the Court upon the Government's Motion for Reconsideration of Court's Order to Remit Criminal Restitution, (file doc. 28), filed on January 31, 2006. Defendant Keith Howard Akers ("Defendant") has not responded and the time for doing so has expired. Accordingly, this Motion is ripe for disposition by the Court.

On January 27, 2006, Defendant was sentenced for violations of the terms of his supervised release. On February 10, 2006, a Judgment was entered by this Court sentencing Defendant to twelve (12) months imprisonment, and remitting the balance, \$149.29, of Defendant's restitution. Shortly after the sentencing hearing, the Government filed the Motion before the Court today, requesting that Defendant's restitution obligation be reinstated.¹

While the Government has provided the Court with sufficient information to make the determination as to whether it possessed the authority to order the restitution remitted, it has failed to provide any authority which allows a court to amend a Judgment on an issue such as reinstating restitution. Federal Rule of Criminal Procedure 35(a) states that "[w]ithin 7 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other

¹ The Court notes that the Government asserts a restitution balance of \$74.29. However, as evidenced by the Judgment and Commitment Order, the Court was provided with information showing the remaining balance to be \$149.29.

clear error.” There is no issue as to the timeliness of the Government’s Motion. But, the Court is uncertain that Rule 35(a) provides it with the authority to amend the Judgment in regards to reinstating restitution. Accordingly, the Government is instructed to supplement its motion with a memorandum of law citing the authority which allows the Court to grant the Government the relief it seeks.

IT IS THEREFORE ORDERED that the Court will not consider the Government’s Motion for Reconsideration until a supplemental memorandum of law is submitted citing authority which allows the Court to grant the relief requested.

Signed: April 11, 2006

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees
Chief United States District Judge

